

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPLICATION NO.5406 OF 2005
IN
CRIMINAL APPEAL NO.750 OF 2004

Imtiyaz @ Elias Mumtiyaz Shaikh

Applicant

Vs.

The State of Maharashtra

Respondent

Mr.Ganesh Gole for applicant.
Mr.S.S.Pednekar, APP for State.

CORAM: S.S.PARKAR & ANOOP V. MOHTA,JJ.
August 25, 2005.

P.C.

1. Heard.

2. This is the second application for bail made on behalf of the appellant who was original accused no.1. His earlier application was rejected by this Court by order dated 30th August 2004. The name of the accused no.1 for having slit the neck of the deceased was given by none other than the injured himself when the police found him lying bleeding from his neck. Injured-deceased had given the name of this applicant and also that he was resident from Bandra Plot, Jogeshwari. According to the medical evidence the injured was in a position to speak even when he was attended after he was removed to the

hospital by the police. The FIR contains the name of the applicant which was filed by the police who had removed him to the hospital. The argument that though deceased did not die immediately his dying declaration was not recorded is not open. As observed by trial Court, he had to undergo operation on his neck and thereafter he was never available to the police for taking steps for arranging for recording his statement by Special Executive Officer. Since co-accused i.e. accused nos.2 and 3, who are father and mother of accused no.1, have been convicted not for offence of murder but for offence under Section 364 of IPC and sentenced to seven years' imprisonment there can be no comparison between the case of accused no.1 and accused nos.2 and 3. There is evidence that the deceased was abducted few hours before he was found in injured condition, by accused nos.1 to 3 i.e. the son, father and mother and thereafter he was slit on his neck with a knife by accused no.1 as per the information given by the injured deceased himself to the police who removed him to the hospital.

3. Hence the application is rejected. However, since the appellant is in custody, the hearing of the appeal is expedited.

(S.S.PARKAR,J.)

(ANOOP V.MOHTA,J.)